

Tuesday, March 28, 2006

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

J. Mwah Polson, 306075  
2002, \$1,067.00 Assessment  
For Appellant:

J. Mwah Polson, Taxpayer  
Mark McEvilly, Tax Counsel  
Johnathan Hatae, Intern

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown respondent erred in denying appellant's use of head of household filing status.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 3.15)

Action: Upon motion of Ms Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Scott R. Martin and Judith E. Martin, 253561  
1999, \$9,399.00 Assessment

For Appellant: Scott R. Martin, Taxpayer  
For Franchise Tax Board: Judy Hirano, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent properly determined that merchant seaman wages received by appellant-husband are subject to California income tax.

Whether appellants' recent divorce affects their respective tax liabilities.

Appellant's Exhibit: Chart and Miscellaneous Documents (Exhibit 3.16)  
Power Point Presentation printed from Compact Disk (Exhibit 3.17)

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Michael Dilkey and Nancy Dilkey, 306366  
1997, \$7,837.86 Claim for Refund  
1998, \$2,539.18 Claim for Refund  
1999, \$8,738.50 Claim for Refund  
Motivated Transportation Dynamics, Inc., 306391  
1999, \$8,738.50 Claim for Refund  
For Claimant:

Joy E. Cadunz, Attorney  
Nancy Dilkey, Taxpayer  
Christopher Parker, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Issue: Whether appellants have demonstrated error in respondent's calculation of unreported income which was based on respondent's comparison of tax returns to bank deposits.  
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Manuel Mireles and Rosa Mireles, 304422**

1998, \$26,619.00 Assessment

For Appellant:

Antonio Gomez, Jr., Enrolled Agent

Ken Nordberg, Assistant

For Franchise Tax Board:

Christopher Parker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have met their burden of proof to show that respondent's assessment was incorrect.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board modified the action of the Franchise Tax Board by allowing the conceded additional reduction in the excess deposits for the \$9,000.00 bank error and allowing \$10,600.00 in Federal Unemployment Tax. Further, the Board ordered that the remainder of the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

**Robert P. Anderson and Marlene P. Anderson, et al., 313978**

**Stephen R. Fake and Deborah J. Fake, et al., 314025**

**Dan M. Lusky and Lisa Dewitt-Lusky, et al., 313988**

1998, \$355,636.00 Assessment

1999, \$43,898.00 Assessment

2000, \$21,161.00 Assessment

For Appellant:

Betty J. Little, Attorney

For Franchise Tax Board:

Ann Hodges, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants' family limited partnerships acquired stock of DBS Microwave, Inc., in an original acquisition such that the stock can be considered "qualified small business stock."

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

## **PUBLIC COMMENT**

Phillip Plant, representing the Ceridian Group, made public comment before the Board on behalf of Mercury General Corporation.

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Mercury General Corporation, 145450

1993, \$1,924,582.16

1994, \$1,593,504.39

1995, \$1,936,025.87

1996, \$2,131,411.09

For Appellant:

Rick Richman, Representative

Valerie Dickerson, Representative

For Franchise Tax Board:

John Penfield, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether or not appellant has met its burden of proving error in respondents determination to allocate administrative and operating expense deductions between exempt and nonexempt income.

Appellant's Exhibit: Citations Related to Section 24425 (Exhibit 3.18)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel not participating, the Board submitted the appeal for decision.

The Board recessed at 12:15 p.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Joseph R. Banister, 305606

2002, \$895.00 Tax, \$223.75 Late Filing Penalty, \$223.75 Notice and Demand Penalty

For Appellant:

Joseph R. Banister, Taxpayer

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated error in respondent's proposed assessment of tax.

Whether appellant has demonstrated reasonable cause for the abatement of the late filing and notice and demand penalties.

Whether the Board should impose a frivolous appeal penalty.

Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**SALES AND USE TAX APPEALS HEARING**

Chris T. Attkisson and Loretta P. Attkisson, 235821 (KHO)

10-1-98 to 6-30-02, \$106,929.63 Tax, \$10,692.99 Negligence Penalty

For Petitioner:

Cherri Attkisson Makasian, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioners have established their right to certain deductions for bad debts.

Whether the negligence penalty was properly imposed.

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Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

## **PUBLIC HEARINGS**

### **Business Taxpayers' Bill of Rights Hearings**

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearing.

Speakers: William Matthew Connell, All American Surf Dogs  
Abe Golomb, Sales Tax Reduction Specialist  
Doug Kopol, Waste Management Disposal  
Abe Golomb, Sales Tax Reduction Specialist  
Andy Chicara, Business Owner

### **Property Taxpayers' Bill of Rights Hearings**

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers' Bill of Rights Hearing.

Speakers: Sally Parker, Editor of the *Flatlander* newspaper  
Bob Milbrodt, Appraiser, Yolo County Assessor's Office

### **Proposed Property Tax Rules 140, 140.1, and 140.2, Related to Welfare Exemption for Low-Income Housing Properties, and 143, Related to Irrevocable Dedication and Dissolution Clauses**

Nancy Vadera, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed Rule 140, *Welfare Exemption Requirements for Low-Income Housing Properties*; Rule 140.1, *Requirements of Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties*; Rule 140.2, *Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties*; and, Rule 143, *Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption*. (Exhibit 3.19).

Speakers: Kenneth D. Stieger, Sacramento County Assessor and Vice President, County Assessors' Association  
Lenny Goldberg, California Tax Reform Association  
Johnathan Webb, Executive Director, Foundation for Social Resources

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Mr. Leonard requested that staff provide a recommendation on how to study the effect of these regulations.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted Rule 140, *Welfare Exemption Requirements for Low-Income Housing Properties*, with the cross reference language.

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Mr. Parrish voting no, the Board adopted Rule 140.1, *Requirements of Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties*, as published.

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee, and Ms. Mandel voting yes, Mr. Leonard and Mr. Parrish voting no, the Board adopted Rule 140.2, *Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties*, as published.

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted Rule 143, *Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption*, as published.

## SALES AND USE TAX APPEALS HEARING

Mohammad Wahid Nayibkhil and Arian Baraki, 235824 (KH)

10-1-99 to 9-30-02, \$47,575.44 Tax, \$00.00 Negligence Penalty

For Petitioner: Arian Baraki, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence shows that the audited amount of sales tax reimbursement collected is excessive.

Whether the evidence establishes that petitioner is entitled to additional deductions for bad debts.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

## LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Donald A. Farrelly and Sheila M. Chapman, 265253 (BH)*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

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Radio Engineering Industries, Inc., 241038 (OHA)  
7-1-99 to 6-30-02, \$5,994.72 Tax, \$00.00 Negligence Penalty  
Action: Redetermine as recommended by the Appeals Division.

DSET Corporation, 169300 (OHB)  
10-1-97 to 9-30-00, \$50,937.78 Tax  
Action: Redetermine as recommended by the Appeals Division.

Donald A. Farrelly and Sheila M. Chapman, 265253 (BH)  
5-1-00 to 9-30-00, \$14,745.50 Claim for Refund  
Action: The Board took no action.

Mal-Wal, Inc., 294997 (JHF)  
1-1-00 to 3-31-03, \$194,618.60, \$18,169.02 Negligence Penalty, \$1,292.84 Failure to File  
Penalty  
Action: Redetermine as recommended by the Appeals Division.

Izzat Kamel Asfour, 336702 (BH)  
September 28, 2005 Notice of Seizure and Forfeiture, \$10,327.74 Approximate Value  
Action: Determined that staff properly seized the cigarettes.

Gurdev Singh Pooni, 334693 (KHM)  
October 7, 2005 Notice of Seizure and Forfeiture, \$48.00 Approximate Value  
Action: Determined that staff properly seized the cigarettes.

#### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Mark Crumpacker, 313396*; and, *John J. Roppo, 311951*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Chino Development League, Inc., 311530  
2000, \$72,835.87 Claim for Refund  
Action: Modify the action of the Franchise Tax Board by allowing the December 23, 2003 payment and sustain with respect to the October 6, 2003 payment.

Raymond P. Crum, 309571  
2001, \$1,852.50 Assessment  
2002, \$3,889.50 Assessment  
Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

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Mark Crumpacker, 313396

2002, \$5,417.50 Assessment

Action: The Board took no action.

Bo Gao, 311617

2002, \$811.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kenneth Gisstennar, 306153

1999, \$3,352.62 Assessment

Action: Modify the action of the Franchise Tax Board to abate interest for 1999 between June 13, 2004 and October 7, 2004; otherwise, sustain the action of the Franchise Tax Board.

Howard L. Greenblatt and Debra D. Greenblatt, 303631

1998, \$4,269.00 Assessment

1999, \$30,892.00 Assessment

2000, \$3,577.00 Assessment

2001, \$11,828.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Paul Kaleta and Vicky Kaleta, 287729

2003, \$488.79 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jonathan C. McCracken, 306871

1997, \$365.76 Assessment

Action: Modify the action of the Franchise Tax Board to coincide with respondent's agreement to abate the interest of \$61.75 on the late filing penalty, abate the dishonored check penalties totaling \$30.00 and abate the \$13.00 lien fee; otherwise, sustain the action of the Franchise Tax Board.

Monkee Business, LLC, 317411

2003, \$115.88 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Lawrence Phillips, 266204

1999, \$18,949.00 Assessment, \$762.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

James W. Rafferty, 312501

2002, \$3,178.00 Tax, \$794.50 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Alejandro Roman, 315224

2004, \$960.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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John J. Roppo, 311951

2001, \$11,572.25 Claim for Refund

Action: The Board took no action.

James L. Tarpo, 301163

2002, \$2,527.00 Assessment, \$631.75 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Matthew A. Tunney and Stephany J. Tunney, 308146

2003, \$20,182.32 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Warren D. Ward, 260981

2001, \$725.00 Assessment, \$181.20 Failure to File Penalty

2002, \$109.00 Assessment, \$100.00 Failure to File Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Hang Zhang, 310518

2003, \$1,979.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Avalon Sunset, A California Corporation, 283190

1997, \$126,092.47 Assessment

1999, \$6,097.96 Assessment

Action: Deny the petition for rehearing.

A. Fabian Garces, 270324

1989, \$11,243.73 Claim for Refund

1992, \$8,255.90 Claim for Refund

1994, \$7,434.40 Claim for Refund

1995, \$2,599.00 Claim for Refund

1996, \$5,650.86 Claim for Refund

Action: Deny the petition for rehearing.

Byron Howell and Donnia Howell, 246320

1999, \$610.00 Assessment

Action: Deny the petition for rehearing.

James W. McCain, 270549

2000, \$441.14 Assessment

Action: Deny the petition for rehearing.



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Michael G. McKinney, 290004

2001, \$1,217.00 Assessment

Action: Deny the petition for rehearing.

Rick Spain, 206124

1999, \$3,974.00 Tax, \$1,987.00 Penalties

Action: Deny the petition for rehearing.

Rick Spain, 237220

2000, \$4,141.00 Tax, \$2,070.50 Penalties

Action: Deny the petition for rehearing.

Stephen Trimberger and Laura Trimberger, 288720

1999, \$13,262.00 Assessment

2000, \$7,125.00 Assessment

2001, \$42,108.00 Assessment

Action: Deny the petition for rehearing.

Dale A. Waltz and Anita L. Waltz, 288719

1999, \$31,242.00 Assessment

2000, \$9,202.00 Assessment

2001, \$273.00 Assessment

Action: Deny the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Yevgenia Bogomilsky, 300010

2001, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Majid Deyhim, 328872

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Margie Garcia, 301772

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Pamela Lashonda Ross, 306982

2004, \$347.00

Action: Sustain the action of the Franchise Tax Board.

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**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF  
PENALTIES/INTEREST AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties/Interest and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in *Ralphs Grocery Company*, 338976; and *Food 4 Less of California, Inc.*, 338977; Mr. Parrish not participating in *Ralphs Grocery Company*, 338976; the Board made the following orders:

Michelin Tire Corporation, 214644 (OHB)

4-1-98 to 12-31-01, \$88,678.90

Action: Approve the redetermination as recommended by staff.

Automated Packaging Systems, Inc., 310290 (OHA)

4-1-01 to 3-31-04, \$61,427.15

Action: Approve the redetermination as recommended by staff.

Aptix Corporation, 84143 (GH)

4-1-96 to 3-31-99, \$86,112.45

Action: Approve the redetermination as recommended by staff.

Sunset Aviation, Inc., 331752 (UT)

7-15-04, \$101,853.75

Action: Approve the redetermination as recommended by staff.

First American Real Estate Southern, LLC., 241701 (EA)

4-1-98 to 7-31-00, \$1,222,366.04

Action: Approve the redetermination as recommended by staff.

California Auto Express, Inc., 255771 (AS)

2-1-99 to 12-31-02, \$165,207.23

Action: Approve the redetermination as recommended by staff.

Charles River Laboratories, Inc., 296703 (OHB)

4-1-00 to 6-30-03, \$104,780.11

Action: Approve the redetermination as recommended by staff.

Eisenhower Health Services, 254081 (EHC)

7-1-99 to 6-30-02, \$67,045.24

Action: Approve the redetermination as recommended by staff.

Ralphs Grocery Company, 338976 (AA)

1-31-05 to 5-22-05, \$1,059,998.90

Action: Approve the relief of penalty/interest as recommended by staff.

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Rancho Ready Mix, 339053 (EH)

4-1-05 to 6-30-05, \$53,980.40

Action: Approve the relief of penalty/interest as recommended by staff.

Grove Lumber &amp; Building Supply, Inc., 340029 (EH)

7-1-05 to 7-31-05, \$89,160.00

Action: Approve the relief of penalty/interest as recommended by staff.

Food 4 Less of California, Inc., 338977 (AA)

1-31-05 to 5-22-05, \$176,426.20

Action: Approve the relief of penalty/interest as recommended by staff. Mr. Chiang not participating.

Qualex, Inc., 336917(OHB)

4-1-99 to 12-31-02, \$54,492.97

Action: Approve the relief of penalty/interest as recommended by staff.

Bizmart, Inc., 340026 (OHA)

10-1-04 to 12-31-04, \$64,555.60

Action: Approve the relief of penalty/interest as recommended by staff.

California Builder Appliances, Inc., 339057 (JH)

5-1-05 to 6-15-05, \$51,368.34

Action: Approve the relief of penalty/interest as recommended by staff.

Gunderson Auto Group, LLC, 339067 (AP)

10-1-04 to 12-31-04, \$50,345.80

Action: Approve the relief of penalty/interest as recommended by staff.

Hughes Markets, Inc., 338939 (AA)

1-31-05 to 5-22-05, \$173,437.80

Action: Approve the relief of penalty/interest as recommended by staff.

Mills/Peninsula Hospital, 339788 (BH)

1-1-03 to 12-31-04, \$75,168.59

Action: Approve the denial of claim for refund as recommended by staff.

Swingles Furniture Rental, Inc., 255297 (OHA)

10-1-99 to 9-30-02, \$500,000.00

Action: Approve the denial of claim for refund as recommended by staff.

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**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Riso Family Motors, Inc., 340083 (EH)

4-1-04 to 4-21-04, \$141,079.04

Action: Approve the credit and cancellation as recommended by staff.

National Ready Mixed Concrete Company, 336947 (AR)

10-1-02 to 9-30-05, \$98,925.91

Action: Approve the refund as recommended by staff.

Lynwood Unified School District, 315353 (AA)

4-1-02 to 12-31-04, \$242,558.04

Action: Approve the refund as recommended by staff.

Lick Wilmerding School, 300642 (BH)

1-1-02 to 12-31-04, \$53,629.79

Action: Approve the refund as recommended by staff.

California Physician's Service, 289235 (BH)

7-1-01 to 6-30-04, \$62,774.62

Action: Approve the refund as recommended by staff.

Charles Bullock Hope, 309524 (FH)

1-1-02 to 12-31-04, \$50,541.46

Action: Approve the refund as recommended by staff.

Inter-State Oil Company, Inc., 310355 (KH)

1-1-02 to 3-31-05, \$381,358.11

Action: Approve the refund as recommended by staff.

The Sleep Train, Inc., 271026 (KH)

1-1-03 to 3-31-03, \$78,371.77

Action: Approve the refund as recommended by staff.

Lanier Worldwide, Inc., 287927 (OHC)

1-1-98 to 3-31-02, \$250,103.67

Action: Approve the refund as recommended by staff.

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Container Corporation of America, 317034 (AA)

1-1-02 to 12-31-04, \$78,962.56

Action: Approve the refund as recommended by staff.

Sunrider Corporation, 336390 (AS)

1-1-00 to 12-31-02, \$51,067.50

Action: Approve the refund as recommended by staff.

Childtime Childcare, Inc., 234105 (OHA)

4-1-00 to 12-31-02, \$117,188.16

Action: Approve the refund as recommended by staff.

GEAC Enterprise Solutions, Inc., 339534 (OHC)

7-1-00 to 12-31-04, \$83,616.52

Action: Approve the refund as recommended by staff.

Datex-Ohmeda, Inc., 333018 (OHA)

4-1-05 to 6-30-05, \$117,670.07

Action: Approve the refund as recommended by staff.

Vacco Industries, 294849 (AP)

10-1-01 to 9-30-04, \$59,821.59

Action: Approve the refund as recommended by staff.

Goldman Sachs &amp; Company, 264927 (OHB)

4-1-99 to 3-31-02, \$161,928.42

Action: Approve the refund as recommended by staff.

Rocco Grieco, 301064 (AA)

1-1-02 to 9-30-04, \$146,020.61

Action: Approve the refund as recommended by staff.

Corporate Software &amp; Technology, 313780 (OHC)

7-1-02 to 9-30-02, \$65,603.62

Action: Approve the refund as recommended by staff.

Keypoint Credit Union, 313695 (GH)

10-1-02 to 6-30-04, \$416,172.82

Action: Approve the refund as recommended by staff.

S &amp; T Corporation, Inc., 318376 (AC)

4-1-02 to 6-30-05, \$296,807.65

Action: Approve the refund as recommended by staff.

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Erickson Air-Crane, Inc., 300077 (KHM)

10-1-01 to 6-30-05, \$85,980.79

Action: Approve the refund as recommended by staff.

Favrille, Inc., 339419 (FH)

1-1-02 to 12-31-04, \$53,696.00

Action: Approve the refund as recommended by staff.

W. W. Grainger, Inc., 339635 (OHA)

1-1-99 to 12-31-02, \$289,716.16

Action: Approve the refund as recommended by staff.

Northrop Grumman Systems Corporation, 327437 (AS)

4-1-05 to 6-30-05, \$219,289.99

Action: Approve the refund as recommended by staff.

USE Credit Union, 312985 (FH)

4-1-02 to 12-31-04, \$60,694.73

Action: Approve the refund as recommended by staff.

A-L Financial Corporation, 315503 (EA)

10-1-04 to 3-31-05, \$192,647.69

Action: Approve the refund as recommended by staff.

A-L Financial Corporation, 333019 (EA)

4-1-05 to 9-30-05, \$229,276.37

Action: Approve the refund as recommended by staff.

### **SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT**

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang not participating in *General Electric Capital Assurance, 316548*; Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Sun Life Assurance Company of Canada, 268875 (OH)

1-1-03 to 3-31-04, \$75,430.70

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

General Electric Capital Assurance, 316548 (OH)

4-1-05 to 6-30-05, \$130,046.80

Action: Approve the relief of penalty as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Explorer Insurance Company, 333665 (OH)

1-1-05 to 12-31-05, \$51,207.60

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**SPECIAL TAXES MATTERS, REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Aetna Life Insurance Company, 339374*; the Board made the following orders:

Costco Wholesale Corporation, 339364 (EH)

12-23-05, \$338,286.39

Action: Approve the refund as recommended by staff.

Aetna Life Insurance Company, 339374 (OH)

1-1-04 to 12-31-04, \$1,001,754.23

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Tareq Sulaiman and Kathy Sulaiman, 249880 (GH)

10-1-00 to 12-31-02, \$97,444.37 Tax, \$9,776.44 Negligence Penalty

Considered by the Board: February 1, 2006

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

John Raymond Collins and Lisa House, 170436 (UT)

8-14-98, \$58,371.63 Tax

Considered by the Board: November 1, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

AGS Enterprises, Inc., 215145 (FH)

7-10-98 to 9-30-01, \$58,343.41 Tax, \$6,125.64 Negligence Penalty

Considered by the Board: November 1, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

**Tuesday, March 28, 2006**

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Tri-Air, Inc., 240935 (KHO)

1-1-95 to 12-31-01, \$3,727.53 Tax, \$1,428.72 Failure to File Penalty

Considered by the Board: June 30, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Speaker: Harry Gordon Oliver spoke on *Giuseppe Aiello, et al.* 240658.

James C. Meek and Florence Meek, 290009

1997, \$1,000.00 Claim for Refund

1998, \$596.00 Claim for Refund

Considered by the Board: Formal Opinion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the formal opinion.

Norma Jean Cattle Company, 303567

2002, \$100.00 Claim for Refund

Considered by the Board: November 15, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Giuseppe Aiello, 240658

Bennie Anselmo, 241129

Bennie Anselmo, Sr., 241151

Thomas Arens, 241154

Renato Avanzino, 241159

Michael Joseph Biagini and

Elizabeth A. Biagini, 241164

Natalio Cademartori, 241330

Fernando Cambri, 241332

Juanito Cuneo, 241334

Ugo J. Cuneo, 241335

Victor D'Agnolo, 241336

Casimiro Damele, 241337

Adolpho Delcarlo, 241339

Mary Della Cella, 241340

Susan Della Cella, 241342

Mario Delucchi, 241344

Alfred De Martini, 241365

Estate of Ann M. De Martini, 241366

Eugene V. De Martini, 241368

Gino De Martini, 241369

Paul De Martini, 241370

Angelo DeVincenzi, 241371

James DeVincenzi, 241372

Alipio Fatica, 241373



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Elmo Fatica, 241374  
Luciano Ferrari, 241377  
Giacomo Franco, 241378  
Bernardo Ghigliazza, 241379  
Gloria Ghirarduzzi, 241380

Mario Grelli, 241381  
Orel Jackson, 241382  
Attilio Malatesta, 241386  
Anthony J. Oneto, 241391  
Vincenzo Pasquinelli, 241392  
Antonio Passetti, 241393  
Quinto Passetti, 241394  
Flora Raggio, 241396  
Louie J. Ratto, 241398  
Ernest J. Ronzani, 241400  
Raniero Roselli, 241401  
Angelo Ricchetti, 241402

Francesco Rissotto, 241403  
Dante Steccone, 241406  
Mario G. Steccone, 241407  
Luis Stella, 241408  
Luis M. Torres, 241409  
Dina T. Vannelli, 241411  
Paul E. Worden, 241413  
Hugo Giovannini, 241414  
Julia Capella, 241415  
Gloria Devincenzi, 241418  
P. J. Capella Exemption Trust, 241420  
Estate of Flavio C. Calcagno, 241421  
Fortunato Conti, 241422  
John M. Frederick, 241423  
Sisto Giuliacci, 241424  
Alvaro Nardi and Rose Nardi, 241426  
Louis Matteucci, 241428

1995, \$1.00 or more Claim for Refund

Considered by the Board: September 1, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision denying the petition for rehearing and modifying its September 1, 2005 decision in order to reverse the action of the Franchise Tax Board in the matter of *Mary Della Cella*, 241340, as recommended by staff.

Richard M. Trank, 304962

1999, \$2,084.75 Claim for Refund

Considered by the Board: December 13, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Yee voting no, the Board adopted a decision reversing the action of the Franchise Tax Board.

Elizabeth Montes, 224954

Dennis Arthur Speldrick, 225542

1997, \$1,043.94 Assessment

Considered by the Board: November 15, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and duly carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel voting no, the Board adopted a decision denying the petition for rehearing.

Tuesday, March 28, 2006

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

**PROPERTY TAX MATTERS**

**Unitary and Nonunitary Land Escaped Assessments**

Citizens Telecommunications Company of California, Inc. (284)

2002-2004, \$300,241.00 Value

Pacific Bell Telephone Company (279)

2002-2004, \$235,558.00 Value

Cal-Ore Telephone Company (328)

2002-2004, \$82,150.00 Value

Sacramento Valley Limited Partnership (2513)

2004, \$43,146.00 Value

GTE Mobilnet of California, Ltd. Partnership (2559)

2004, \$237,881.00 Value

WWC License, LLC (2665)

2005, \$80,400.00 Value

Nextel of California, Inc. (2737)

2004, \$298,273.00 Value

Level 3 Communications, LLC (7761)

2002-2004, \$570,000.00 Value

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the unitary escaped assessment as recommended by staff.

**Private Railroad Car Tax Refund**

California Railcar Corporation (5752)

2004, \$299.45

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board granted the private railroad car tax refund as recommended by staff.

**Board Roll Changes**

2003, 2004 and 2005 State-Assessed Property Rolls

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved Roll Correction Batch Roster 05-09 containing four changes to the 2003 Board Roll, six changes to the 2004 Board Roll, and eight changes to the 2005 Board Roll of State-Assessed Property as recommended by staff (Exhibit 3.20).

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**OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Donald Napoli*; *Hassan S. Tabrizi*; and, *Peggy Newton*; as recommended by staff.

**CHIEF COUNSEL MATTERS****RULEMAKING****Alternative Approaches for Taxation of Third-party Consideration**

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed language for alternative approaches for the taxation of third-party consideration with reference to Sales and Use Tax Regulation 1671, *Trading Stamps and Related Promotional Plans*, and Proposed Regulation 1671.1, *Discounts, Coupons, Rebates and Other Incentives* (Exhibit 3.21).

Speakers: Eric J. Miethke, Merksamer, Nielsen Merksamer

Action: Mr. Parrish moved to approve Alternative 3 for the interested parties process. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Yee voting no, Ms. Mandel abstaining.

Ms. Yee moved to approve Alternative 2 for the interested parties process. The motion failed for lack of a second.

Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved all four alternatives for the interested parties process.

The Board recessed at 3:33 p.m. and reconvened at 3:45 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD MARCH 28, 2006**

J. Mwah Polson, 306075

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Scott R. Martin and Judith E. Martin, 253561

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

**Tuesday, March 28, 2006**

Michael Dilkey and Nancy Dilkey, 306366

Motivated Transportation Dynamics, Inc., 306391

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish voting no, the Board sustained the action of the Franchise Tax Board.

Robert P. Anderson and Marlene P. Anderson, et al., 313978

Stephen R. Fake and Deborah J. Fake, et al., 314025

Dan M. Lusky and Lisa Dewitt-Lusky, et al., 313988

Final Action: Mr. Parrish moved to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board sustained the action of the Franchise Tax Board.

Mercury General Corporation, 145450

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel not participating, the Board sustained the action of the Franchise Tax Board.

Joseph R. Banister, 305606

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and duly carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, the Board sustained the action of the Franchise Tax Board and imposed a frivolous appeal penalty of \$5,000.00.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD MARCH 28, 2006**

Mohammad Wahid Nayibkhil and Arian Baraki, 235824 (KH)

Final Action: Ms. Mandel moved that the petition be redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Yee. Ms. Mandel withdrew her motion.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that amnesty interest penalty be relieved if, within 30 days of the Notice of Redetermination, petitioner either: pays the full amount of tax and interest due; or enters into an installment agreement with the Sales and Use Tax Department for full payment of the tax and interest due within 13 months, and successfully completes that installment agreement; otherwise redetermine as recommended by the Appeals Division.

The Board adjourned at 3:53 p.m.

*The foregoing minutes are adopted by the Board on June 27, 2006.*

**Tuesday, March 28, 2006**

Note: The following cases were removed from the calendar prior to the meeting: *United Parcel Service, Inc.*, 98724, 126831, 131381, 153034, 192709, 242411, 98726, 131383, 131431, 153036, 207917, 242304, 272826; *P.J. Helicopters, Inc.*, 224188; *John T. Berg*, 300516; *Geoffrey K. Wascher*, 307238; and, *Anna Ellis*, 282922.